

# The Flinn Report

Illinois

# Regulation

Claire B. Eberle, Editor

700 Stratton Bldg., Springfield IL 62706

**Joint Committee on Administrative Rules**

Illinois General Assembly

217/785-2254

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*Illinois Regulation is a summary of the weekly regulatory decisions of State agencies published in the Illinois Register and action taken by the Illinois General Assembly's Joint Committee on Administrative Rules. Illinois Regulation is designed to inform and involve the public in changes taking place in agency administration.*

## New Regulations

### **POTABLE WATER WELLS AND COMMUNITY RIGHT TO KNOW**

The POLLUTION CONTROL BOARD adopted a new Part titled "Standards and Requirements for Potable Water Supply Well Surveys and for Community Relations Activities Performed in Conjunction with Agency Notices of Threats from Contamination" (35 Ill Adm Code 1600; 30 Ill Reg 8061), effective 9/15/06, to implement Public Act 94-314, which requires the Board to adopt rules by 9/17/06 governing potable water well surveys and community relations activities in response to releases of contaminants that have impacted or may impact offsite groundwater or soil. The rulemaking includes minimum standards for the performance and documentation of water well surveys required under applicable Board rules. When water well surveys are required, compliance with minimum standards during site investigations to ensure complete and accurate identification of the existence and location of potable water supply wells is required. Additionally, the rulemaking sets standards and requirements for community relations activities to be developed and implemented when the authorized party agrees to take on the IEPA's notice obligations as part of IEPA-approved

community relations activities. Changes since 1<sup>st</sup> Notice (1) expand the circumstances in which an authorized party is required to develop a community relations plan and issue fact sheets and (2) specify that such fact sheets must include responses to key community concerns as expressed by affected, potentially affected, and interested parties. Also, an authorized party may be required to create a document repository at a physical location in a public place in addition to the mandatory website document repository for such items as reports, notices, and community relations plans. A small business, small municipality, or not-for-profit corporation that is required to survey water wells and/or provide public information as part of its response action to a release or threat of release of regulated contaminants will be affected by this rulemaking.

Requests for copies: Dorothy Gunn, PCB, 100 W. Randolph, Ste. 11-500, Chicago IL 60601, 312/814-3620 or download copies at [www.ipcb.state.il.us](http://www.ipcb.state.il.us). For more information: Amy Antonioli at the same address, 312/814-3665, e-mail: [antonioa@ipcb.state.il.us](mailto:antonioa@ipcb.state.il.us). Please reference docket R06-23.

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## Proposed Regulations

### **AUTO SALES TAX**

The DEPARTMENT OF REVENUE proposed amendments to "Retailers' Occupation Tax" (86 Ill Adm Code 130; 30 Ill Reg 15555) that eliminate the sales tax exemption when the automobile is delivered to a non-resident of Illinois if the non-resident's state does not have a reciprocal exemption. The tax will be assessed at the non-resident's state rate so long as it does not exceed Illinois' rate. Snowmobiles, off-highway motorcycles, all-terrain vehicles, all watercraft regardless of whether the trailer portion is exempt, and motorcycles and motor-driven cycles not equipped for highway use are not eligible for the exemption. Purchasers who are non-residents of Illinois and Illinois retailers making those sales may be affected by this rulemaking.

Questions/requests for copies/comments through 11/13/06: Samuel Moore, DOR, Legal Services Office, 101 W. Jefferson, Springfield IL 62794, 217/782-2844.


### **FILM PRODUCTION TAX CREDIT**

The DEPARTMENT OF COMMERCE AND ECONOMIC OPPORTUNITY proposed amendments to "Illinois Film Production Services Tax Credit Program" (14 Ill Adm Code 528; 30 Ill Reg 15316). The amendments add commercials to the list of approved productions for tax credit purposes. The

(cont'd page 3)

**NEW REGULATIONS:** Rules adopted by agencies this week.

**PROPOSED REGULATIONS:** Rules proposed by agencies this week, commencing a 45-day First Notice period. Public comments must be accepted by the agency for the period of time indicated.

: Symbol designating rules of special interest to small businesses, small municipalities, and not-for-profit corporations. Agencies are required to consider comments from these groups and minimize the regulatory burden on them.

**QUESTIONS/COMMENTS/RULE TEXT:** Direct mail or phone calls to the agency personnel listed below each summary. Providing volume and issue number of The Flinn Report or the Illinois Register will expedite the process. Some agencies charge copying fees. However, copy requests do not have to be made under the Freedom of Information Act.

# New Regulations

## ☞ WASTEWATER TREATMENT

The ENVIRONMENTAL PROTECTION AGENCY adopted amendments for "Procedures for Issuing Loans from the Water Pollution Control Loan Program" (35 Ill Adm Code 365; 30 Ill Reg 2002), effective 9/18/06, that make the Part consistent with current federal Clean Water Act requirements and 35 Ill Adm Code 662 (Procedures for Issuing Loans from the Public Water Supply Loan Program). EPA also changed the Part title from "Revolving Fund" to "Loan Program". (This program provides low interest loans to units of local government for the construction of wastewater facilities and is capitalized with federal and State funds. In addition, the loan funds repaid annually are available for new loan awards.) Covered topics include federal requirements for the program; liabilities and remedies for failure to comply with loan procedures; loan issuance procedures and loan project planning requirements; financial and managerial capability; procedures for loan repayment and delinquent repayment; and requirements applicable to subagreements, project construction, loan disbursements, and access to and auditing of records. It is not possible to cover in this newsletter all the amendments adopted in this rulemaking. If you want further details, please contact the agency representative noted below. A change since 1<sup>st</sup> Notice allows certain user charge system approval criteria to be waived for loans issued between 10/1/94 and 10/1/06 rather than between 10/1/94 and this rulemaking's effective date (9/18/06). Small municipalities that apply for loans through the Water Pollution Control Loan Program will be affected by this rulemaking.

Questions/requests for copies: Geoff Andres, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-2027.

## FOOD STAMPS

The DEPARTMENT OF HUMAN SERVICES adopted an amendment for

"Food Stamps" (89 Ill Adm Code 121; 30 Ill Reg 6673), effective 9/12/06, to increase the air conditioning/heating standard utility allowance from \$259 to \$299 and the limited standard utility allowance from \$155 to \$165. (The air conditioning/heating standard utility allowance is for households billed for (1) heating, air conditioning, or both or (2) heating, air conditioning, and electricity. The limited standard utility allowance is for households that are not billed for air conditioning or heating but are billed for at least 2 other utilities. The allowance constitutes a deduction from monthly income that a food stamp applicant is allowed to offset against his or her monthly income when determining food stamp eligibility.) These allowances comply with federal Department of Agriculture (USDA) Food and Nutrition Service recommendations resulting from a 22% increase in the cost of natural gas.

Questions/requests for copies: Tracie Drew, DHS, 100 S. Grand Ave. E., 3<sup>rd</sup> Fl., Springfield IL 62762, 217/785-9772.

## WATERFOWL HUNTING

The DEPARTMENT OF NATURAL RESOURCES adopted amendments to "Duck, Goose and Coot Hunting" (17 Ill. Adm. 590; 30 Ill Reg 11000), effective 9/18/06, to update the 2006-07 hunting season. The Canada Goose quota system and corresponding quota zones are eliminated. Certain regulations that used to pertain to the Southern Illinois quota zone will remain in force, now identified by county. Also, the list of allowable shot sizes and types is updated to add "Wingmaster HD" to the list of prohibited ammunition. Spring Lake State Fish and Wildlife Area is added to the list of permit-controlled sites, and site-specific changes are made for the William Powers Conservation Area, Lake Sinnissippi, Marshall State Fish and Wildlife Area (Sparland Unit), Kickapoo State Recreation Area, Mermet Lake, Pyramid State Park (multiple units), Lake Shelbyville (multiple units), and Horseshoe Lake State

Park (Madison County - multiple units). Changes since 1<sup>st</sup> Notice add the specific dates of federal rules pertaining to migratory bird hunting; strike obsolete definitions of the north, central, and south waterfowl hunting zones; and clarify that the 12-decoy minimum within the blind area at Mermet Lake applies per hunting party.

Questions/requests for copies: Jack Price, DNR, One Natural Resources Way, Springfield IL 62702-1271, 217/782-1809.

## ☞ SOS INSPECTOR GENERAL

The SECRETARY OF STATE adopted a new section for "Departmental Duties" (2 Ill Adm Code 552; 30 Ill Reg 2501), effective 9/18/06, outlining investigation procedures for the SOS Office of Inspector General (OIG). The OIG will conduct all investigations in a professional manner using investigative interviews consistent with current police practices and techniques and also complying with all laws and agreements relating to the questioning of employees or other individuals. When the OIG initiates investigations, the OIG will maintain an intake procedure under the chief of investigations for processing all complaints. Complaints may be received by telephone, letter, fax, e-mail, or in person, and anonymous complaints will be accepted. Complaints must include facts demonstrating OIG jurisdiction and a reasonable belief that employee misconduct may have occurred. The chief of investigations will assume responsibility for supervising all investigative activities, ensuring proper documentation of investigations, securing evidence, and completing reports and case summaries. Investigative activities include interviews, requests for information, custody of physical evidence, and physical inspection of a site, among others. All cases will be characterized as active, pending, or closed. A case may be categorized as pending/inactive if no investigative activity is anticipated for 30 days or longer. A case is closed when investigative action ceases due to unfounded

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allegations, there has been an administrative closing of the case, adjudication of all subjects is completed, or the case is referred to another agency for an investigation in which the OIG will not participate. Case summary reports will be completed at the conclusion of each investigation and forwarded on through the chief of investigations, Inspector General, and director of the appropriate SOS department for informational purposes or for disciplinary action. Also, a copy will be forwarded to the director of personnel within the SOS. Liaison policies between the OIG and other law enforcement agencies are prescribed. Changes since 1<sup>st</sup> Notice specify the required minimum components of an investigative file and the minimum levels of security that must be provided for physical evidence. Those affected by this rulemaking include municipal law enforcement agencies called upon to assist in an OIG investigation.

Questions/requests for copies: Nathan Maddox, Office of the SOS, 298 Howlett Bldg., Springfield IL 62701, 217/785-3094.

## HIGHWAY ADVERTISING

The DEPARTMENT OF TRANSPORTATION adopted amendments for "Control of Outdoor Advertising Adjacent to Primary and Interstate Highways" (92 Ill Adm Code 522; 30 Ill Reg 6125), effective 10/1/06. This Part specifies the permitting procedures

and standards for signs erected on interstate and certain other highways. The proposed amendments add mining and mineral extraction activities to the definition of "business area" for signage purposes. Multiple message signs displaying a series of messages must provide fixed messages for 10 seconds with a transition time of 3 seconds or less between messages. Existing signs adjacent to an interstate highway cannot be re-erected or altered (other than regular maintenance) without procuring a permit to do so. As part of the permit application process, applicants must submit a letter on the local governing agency's letterhead verifying zoning classification for the proposed sign location, certifying the site's zoning classification, and providing evidence that the sign site is in an area that is adjacent or in close proximity to commercial or industrial areas. All permit applications must include "Illinois State Plane Coordinates" or references to latitude/longitude coordinates. In the event that a permit applicant does not own the proposed site, the applicant is required to provide a certificate of good corporate standing from the Illinois Secretary of State's Office in addition to the required proof of consent (fully executed site lease, contract to purchase, etc.) to erect and maintain a sign at that location. Also, applicability of certain standards is no longer based upon an area's location within or outside of Cook, DuPage, Lake, McHenry, Kane, and Will coun-

ties. A permit applicant must certify and notarize on the permit application that he or she is not the owner of any abandoned or illegal signage, and permit holders are required to erect signs within 3 years after the permit is issued. If the sign is not erected, the permit becomes void and the applicant must wait 60 calendar days before reapplying for the permit. The rulemaking further refines review procedures for the revocation of permits and defines an abandoned sign as one with no message or display appearing for one year unless the sign advertises its availability. The rulemaking also replaces the map of DOT highway districts with a list of the district addresses and the counties within each district. Changes since 1<sup>st</sup> Notice move Edwards, Wabash, and Wayne counties from DOT's Carbondale district office to the Effingham district office, clarify sign location restrictions that are based upon zoning, and delete all proposed permit application fee increases. An additional change increases the proposed 2-year time frame allowed for erecting a sign after a permit is issued to 3 years. Small businesses and not-for-profit corporations desiring to participate in DOT's sign program may be affected by this rulemaking.

Questions/requests for copies: Richard Hunter, DOT, 2300 S. Dirksen Pkwy., Rm. 103, Springfield IL 62764, 217/782-6243.

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credit is changed to 20% of the production costs and 15% of Illinois labor expenditures on the project. To encourage the use of businesses owned by minorities, females, or persons with disabilities, a diversity plan must be prepared for consideration by DCEO. Consideration of labor expenditures is limited to the first \$100,000 (up from the first \$25,000) of wages paid to each employee in the production. Participation in a training program may sway DCEO in approving

the credit application, and certification that the applicant will remain in good standing is added to the list of information that must be submitted for approval. Multiple episode production may be treated as one production for application purposes. Each quarter, the applicant must submit to DCEO (and DCEO submits to the General Assembly) the number of jobs created and retained, production costs, and information related to the gender and ethnicity of employees

hired. If the applicant has successfully complied with its diversity plan or made a good faith effort, an Accredited Production Certificate will be issued, which in turn will be used to request the Tax Credit Certificate within 2 years of production completion. Credits may be carried forward for 5 years. Accredited productions approved by DCEO after 1/1/05 and commencing before 5/1/06 will be entitled to an additional 15% credit for approved employees earning more



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than \$1,000 on the production and living in an area of high poverty or high unemployment; those commencing on or after 5/1/06 will receive a credit equal to 20% of production spending and 15% of the labor expenditure. Any tax credit earned after 7/11/05 may be transferred by the applicant within one year and may be allocated to no more than 10 transferees. Confidentiality of any documents or data submitted will be preserved subject to State law. Those affected by this rulemaking include small businesses applying for the tax credit and other businesses related to film production.

Questions/requests for copies/comments through 11/13/06: Jolene Clarke, DCEO, 620 E. Adams St., Springfield IL 62701, 217/557-1820, Fax 217/782-0038, e-mail: jolene.clarke@illinois.gov

## STATE RETIREMENT

The STATE EMPLOYEES' RETIREMENT SYSTEM proposed amendments to rules titled "The Administration and Operation of the State Employees' Retirement System of Illinois" (80 Ill Adm Code 1540; 30 Ill Reg 15580) to change the computation method employed for determining the offset (based on benefits received under the Workers' Compensation Act) against any occupational disability or death benefit provided by SERS. Instead of using a weekly wage rate as determined by the Workers' Compensation Commission (WCC), SERS will use an "average" weekly wage as determined by WCC.

Questions/requests for copies/comments through 11/13/06: Patrick Cummings, SERS, 2101 S. Veterans Pkwy., Springfield IL 62794-9255, 217/785-7260.

## POLLUTION REMEDIATION

The POLLUTION CONTROL

BOARD proposed amendments for "Tiered Approach to Corrective Action Objectives" (commonly called TACO regulations) (35 Ill Adm Code 742; 30 Ill Reg 15366) to update standards and procedures applicable to developing remediation objectives for environmental cleanups. Covered topics include adding remediation objectives that are based upon background soil levels for polynuclear aromatic hydrocarbons; adding residential remediation objectives aimed at protecting construction workers; and decreasing the stringency of remediation objectives applicable to lead contamination of soil that affect industrial, commercial, and construction workers. Use of certain forms are mandated, incorporations by reference of test methods and technical support documents are updated, and highway authority agreements are clarified. A new type of document called a highway authority agreement memorandum of agreement (HAA MOA) is specified when a highway authority is the property owner or owner/operator of a leaking underground storage tank and contamination remains under the highway. In such a case, the highway authority and the Illinois Environmental Protection Agency (EPA) will enter into the new HAA MOA. In addition, the rulemaking addresses the problem of proper notification to EPA when a local ordinance change negatively impacts pollution control and addresses the problem of establishing groundwater pollution controls near municipal boundaries. Those affected by this rulemaking include small businesses, small municipalities, and not-for-profit corporations participating in regulatory programs that are subject to the TACO remediation objectives.

Questions/requests for copies/comments through 11/13/06: Dorothy Gunn at the PCB address and telephone number above or Richard McGill at the same address, 312/814-6983, e-mail: mcgillr@ipcb.state.il.us. Please reference docket R06-10.

## BROWNFIELD GRANTS

The ENVIRONMENTAL PROTECTION AGENCY proposed amendments for "Municipal Brownfields Redevelopment Grant Program" (35 Ill Adm Code 885; 30 Ill Reg 15345) to implement a portion of Public Act 94-1021, which specifies the maximum grant amount that a municipality with a "River Edge Redevelopment Zone" may be awarded for brownfield redevelopment. (A brownfield site is a parcel of real property containing actual or perceived contamination that has the potential to be redeveloped after pollution remediation.) Such grants are limited to a maximum of \$2 million per municipality, and grant funds in excess of \$240,000 must be used for grant projects located within the river edge redevelopment zone. Other covered topics include required grant application information and documents, allowable grant agreement amendments, procedures for EPA approval or rejection of grant project changes, and an explanation of what constitutes failure to remediate a brownfield site. Also, the list of grantee costs eligible for reimbursement is expanded to include demolition costs and the costs of asbestos studies, remediation, or abatement in certain instances. Those affected by this rulemaking are municipalities with river edge redevelopment zones that seek grants. At this time, only Aurora, East St. Louis, and Rockford are eligible to receive one of the 2 statutorily authorized pilot river edge redevelopment zones according to the EPA.

Questions/requests for copies/comments through 11/13/06: M. Kyle Rominger, EPA, 1021 N. Grand Ave. E., Springfield IL 62794-9276, 217/782-3397.

## HOSPITAL BOARD HEARING

The HEALTH FACILITIES PLANNING BOARD announced a public

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hearing for a proposed a new Part titled "Hospital Basic Services Preservation Code" (77 Ill Adm Code 1270; 30 Ill Reg 14441) that was published in the 9/8/06 *Illinois Register* to implement Public Act 94-648 [20 ILCS 4050], effective 1/1/06. The public act creates the Hospital Basic Services Preservation Act and the Hospital Basic Services Preservation Fund administered by the State Treasurer to collateralize loans from financial institutions for capital projects necessary to maintain certain basic services required for the efficient and effective operation of essential community hospital providers that cannot meet financial institution credit standards for a standard loan issuance. Hospitals seeking to collateralize loans must apply to HFPB. The hearing is scheduled for 10/12/06, 10:00 a.m. at 100 W. Randolph, 6<sup>th</sup> Fl., Conference Rm. 654, Chicago.

Questions/requests for copies: Jeffrey Mark, HFPB, 525 W. Jefferson, 2<sup>nd</sup> Fl., Springfield IL 62761, 217/782-2043, e-mail: rules@idph.state.il.us

## SCHOOL FOOD SERVICE

JCAR has added further consideration of the State Board of Education's proposed amendments for "School Food Service" (23 Ill Adm Code 305; 30 Ill Reg 86) that were proposed in the 1/6/06 *Illinois Register* to its 10/10/06 Chicago meeting agenda. The amendments as originally proposed provide that, beginning with the 2006-07 school year, all public and private schools serving grade 8 or below that participate in the federal School Breakfast Program or the federal National School Lunch Program must prohibit sales of "non-program items" that are "minimally nutritious" to students before school and during the regular school day. The types of beverages and food items considered minimally nutritious (e.g., soda, candy) are defined, and "non-program" items are those not offered as part of a federal reimbursable meal.

At its April meeting, JCAR objected to, and prohibited the filing of, this rulemaking because the proposed rules affect the public interest, safety and welfare by: setting nutrition standards that are substantively problematic as they do not provide a total approach to child nutrition through diet, nutrition education and exercise; by preempting the purview of the State Task Force on Wellness that is to consider the issue of school nutrition and report to the Governor and the General Assembly by January 2007; and by largely excluding local school district input and expertise in development of the proposal.

SBE responded to JCAR concerning the objection and prohibition by offering to make the following rule text modifications:

Establish the same food and beverage standards for all grade levels K-8

Exclude snack chips from the regulations

Eliminate the restriction on beverage serving size

Regulate food sales only during non-meal times

Remove references to trans-fatty acids (information about their content is not readily available on all food packaging)

Eliminate the reference to Appendix B of the 2005 *Dietary Guidelines for Americans* as the standard for foods that can be sold (this is a sample list, not an inclusive one) and instead allow low-fat yogurts to be sold

Allow a school or district to request an exemption from the nutrition standards for the 2006-07 school year if the standards would conflict with an existing contract or if the school building houses grades above 8 and access to the food service facilities is not distinguished for those in grades 8 and below

Require SBE to revisit the nutrition standards and initiate a rulemaking to align them with any statewide standards recommended by the School Wellness Policy Task Force in its report due in January 2007

SBE published its response in this week's *Illinois Register* at 30 Ill Reg 15832. JCAR will consider these proposed text modifications at its 10/10/06 meeting and also will determine whether the filing prohibition will continue or be withdrawn. The proposed rule or any modifications to the rule may not be adopted as long as the filing prohibition remains in effect.

## Second Notices

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The following rulemakings were moved to second notice this week by the agencies listed below, commencing the JCAR review period. These rulemakings will be considered at JCAR's October 10, 2006 meeting in Chicago.

### DEPT OF AGRICULTURE

"Anhydrous Ammonia Security Grant Program" (8 Ill Adm Code 217) proposed 7/14/06 (30 Ill Reg 12057)

### DEPT OF PUBLIC HEALTH

"Penny Severns Breast and Cervical Cancer Research Fund Rules" (77 Ill Adm Code 970) proposed 7/21/06 (30 Ill Reg 12523)

### DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

"Merit and Fitness" (80 Ill Adm Code 302) proposed 7/14/06 (30 Ill Reg 12064)

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*Illinois General Assembly*

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# **Regulation**

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